

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2013-06
Issued December 12, 2013**

FACTS

The inquiring attorney represented a police officer at a hearing before the Rhode Island District Court regarding a matter that was dismissed at the time of the hearing. The officer's police department is alleging that the officer appeared at the hearing on personal business while on duty, and is conducting an investigation. The police department's investigator has asked the inquiring attorney to answer questions relating to the investigation. The inquiring attorney, citing client confidentiality, has declined to be interviewed by the investigator. In response, the investigator advised the inquiring attorney that if the inquiring attorney did not reconsider, the investigator would draw adverse inferences against his/her client, and that if the investigation resulted in disciplinary action against the client, the inquiring attorney would be called as a material witness at a hearing convened pursuant to the Law Enforcement Officer Bill of Rights (LEOBOR). The inquiring attorney has asked for the client's consent to disclose information to the investigator, but the client does not consent.

ISSUE PRESENTED

May the inquiring attorney, who represented a police officer, disclose information relating to the representation, to the police department?

OPINION

No. Rule 1.6 of the Rules of Professional Conduct prohibits the inquiring attorney from disclosing information relating to the representation to the police department, absent the client's consent. If a court orders the inquiring attorney to disclose information relating to the representation, disclosure would be permissible.

REASONING

Rule 1.6 of the Rules of Professional Conduct states as follows:

Rule 1.6. Confidentiality of information. (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(3) to secure legal advice about the lawyer's compliance with these Rules; or

(4) to comply with other law or a court order.

Comment [1] to Rule 1.6 states the long-standing principle of client confidentiality.

A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

A lawyer's obligation of confidentiality is broader than the attorney-client privilege, and applies in situations other than those where evidence is sought before a court or tribunal.

The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. Comment [1], Rule 1.6.

Rule 1.6 does not distinguish between information that would be considered a confidence or secret. Even information such as a client's identity, address, or fee amount

is information related to the representation and is therefore, confidential under Rule 1.6. Rhode Island Supreme Court Ethics Advisory Panel Opinion 94-42 (1994).

The Panel concludes that without client consent, Rule 1.6 prohibits the inquiring attorney from providing to the police department's investigator information relating to the representation of the police officer. The Panel further advises that if the inquiring attorney is called as a witness before the LEOBOR or any other tribunal, the inquiring attorney should assert the obligation of confidentiality and the attorney-client privilege. If thereafter, the inquiring attorney is ordered by a court to disclose information relating to the representation of the police officer, disclosure would be permissible. Even then, the inquiring attorney must seek to limit disclosure to that which is necessary. See ABA Commission of Ethics and Professional Responsibility, Formal Opinion 94-385 (1984).